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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,814	03/30/2001	Miklos Csore	4175	6646

7590 10/20/2003

THE REILLY INTELLECTUAL PROPERTY LAW FIRM, P.C.
1554 Emerson Street
Denver, CO 80218

EXAMINER

MAHATAN, CHANNING

ART UNIT	PAPER NUMBER
1631	17

DATE MAILED: 10/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/823,814	CSORE ET AL.	
	Examiner	Art Unit	
	Channing S. Mahatan	1631	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 28 July 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-26 and 28-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-26 and 28-31 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on 03 January 2003 is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) Paper No(s). <u>13</u> . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

APPLICANTS' ARGUMENTS

Applicants' arguments in Paper No. 14 (refer to 'Interview Summary' conducted 07 October 2003 wherein the received Paper No. 14 replaces Paper No. 12, filed 28 July 2003, as it is a legible version) have been fully considered but they are not deemed to be persuasive.

Rejections and/or objections not reiterated from previous office actions are hereby withdrawn.

The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

CLAIMS UNDER EXAMINATION

Claims herein under examination are claims 1-26 and 28-31. Claim 27 has been cancelled as indicated by Applicants.

DUTY TO DISCLOSE

Applicants are reminded of the 'Duty to Disclose Information Material to Patentability' under 37 C.F.R. § 1.56. The Duty to Disclose Information Material to Patentability under 37 C.F.R. § 1.56 is cited below:

- (a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by § 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct.

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(1) Prior art cited in search reports of a foreign patent office in a counterpart application, and
(2) The closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

(1) Each inventor named in the application;

(2) Each attorney or agent who prepares or prosecutes the application; and

(3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

(e) In any continuation-in-part application, the duty under this section includes the duty to disclose to the Office all information known to the person to be material to patentability, as defined in paragraph (b) of this section, which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

The citation of the 'Duty to Disclose Information Material to Patentability' under 37 C.F.R. §

1.56 is due to Applicants Specification on page 1 under "References to Appended Items" which

states:

"Reference is also made to SafeTrace Tx Table Administration Manual, Release v1.2.0.0 published November, 1999, SafeTrace Tx User's Guide, published November, 1999, and SafeTrace Tx Reference Manual, also published November, 1999, all published by Wyndgate Technologies of El Dorado Hills, Calif., said publications incorporated by reference herein."

Absent, as of 17 October 2003, is an 'Information Disclosure Statement' with at least the above references and/or other references Applicants deem as material to patentability have been submitted/received. While it is acknowledged there is no "duty to submit information which is not material to the patentability of any existing claim" the above cited references are believed to

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be at least material to patentability as Applicants have indicated the references to be relevant as "incorporated by reference" or functions for at least background. It should be noted attempts to obtain the above references by the Examiner have proven unsuccessful. Therefore, a requirement under 37 C.F.R. § 1.105 is applied wherein Applicants and the Assignee of this application are required to provide the following information that the Examiner has determined is reasonably necessary to the examination of this application. Please provide a copy of each of the following items of art referred to in the Specification:

- 1) SafeTrace Tx Table Administration Manual, Release v1.2.0.0, November 1999.
- 2) SafeTrace Tx User's Guide, November 1999.
- 3) SafeTrace Tx Reference Manual, November 1999.

Applicants are notified any response filed before the fulfillment of 37 C.F.R. § 1.105 will be considered non-responsive and will be treated as such until the above requirement is fulfilled.

Claims Rejected Under 35 U.S.C. § 112 1st Paragraph

The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

NEW MATTER

Claims 1-26 and 28-31 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

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Claims 1, 2-20, 29-31, and all claims dependent therefrom are rejected under 35 U.S.C. § 112, first paragraph. Applicants have failed to provide support, page and line number, for all amended and newly added claim (claim 31). For example, sufficient support in the ‘original’ specification for the introduction of “determining all of the blood attributes of said one of said blood products and said patient specimen; determining the compatibility of said one of said blood products and patient specimen selected by comparing all of said blood attributes thereof” in claim 1 (lines 22-26) is absent. Therefore, claim amendments and the newly added claim are considered NEW MATTER.

Claims Rejected Under 35 U.S.C. § 112 2nd Paragraph

The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9, 11, 12, 13, 15, 20-28, and 30 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention as necessitated by amendment.

VAGUE AND INDEFINITE

Claim 1 (lines 22 and 25-26), 11 (line 2), 12 (line 2), 13 (line 2), 15 (line 2), 20 (line 12), 30 (line 2) and all claims dependent therefrom recite the phrase “all blood attributes”/“blood attributes”/“all attributes”/“said attributes” which is vague and indefinite. It is acknowledged the Specification states “A blood type definition in the computer database is the combination of antibodies and antigens for each blood group (ABO/Rh)”, however, no definitions are provided for “all blood attributes”/“blood attributes”/“all attributes”/“said attributes” thus the claims are viewed as so broadly encompassing (i.e. viscosity, nucleic acid sequence) that it is unclear what

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Applicants' regard the limitation of such language to encompass. Clarification of the metes and bounds, via clearer claim language, is requested.

Claim 21 (line 2) recites the phrase "including a fifth means" which is confusing. Claim 20 (line 14) indicates a "fifth means", thus, it unclear if the "fifth means" of claim 21 is to replace the "fifth means" of claim 20 or is part of the "fifth means" of claim 20 or is a typographical error. Clarification of the metes and bounds, via clearer claim language, is requested.

LACK OF ANTECEDENT BASIS

Claims 12 (line 2) and 13 (line 2) recites the phrase "said attributes" which lacks proper antecedent basis. Claim 10 (which claim 12 depends from) fails to indicate attributes or the identification thereof.

OBJECTION TO DISCLOSURE

The disclosure is objected to because of the following informalities:

The disclosure is objected to due to the following language in the Specification (page 1):

"Reference is made to the microfiche appendix attached hereto and incorporated herein as a part thereof."

Absent from the instant application is a "microfiche appendix attached hereto" and any evidence of record that a microfiche was submitted (also refer to the 'Interview Summary' conducted 09 April 2003). Thus, the microfiche cannot be "incorporated herein as a part thereof" and Applicants are requested to correct such language (i.e. delete) from the Specification.

Appropriate Correction Is Required.

No Claims Are Allowed.

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EXAMINER INFORMATION

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993) (See 37 C.F.R. § 1.6(d)). The CM1 Fax Center number is either (703) 872-9306.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Channing S. Mahatan whose telephone number is (703) 308-2380. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Woodward, Ph.D., can be reached on (703) 308-4028.

Any inquiry of a general nature or relating to the status of this application should be directed to Legal Instruments Examiner, Tina M. Plunkett, whose telephone number is (703) 305-3524 or to the Technical Center receptionist whose telephone number is (703) 308-0196.

Date: *October 20, 2003*

Examiner Initials: *CSM1*

Marianne P. Allen
MARIANNE P. ALLEN
PRIMARY EXAMINER
GROUP 1600
Aut/13